THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.17596 of 1997

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Dated 02-03-2007

Between:

M/s. Paramount Press rep. By its partner, Rasheed Mirza, Saifabad, Hyderbad.

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PETITIONER

AND

The Labour Court, Hyderabad & others.

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….RESPONDENTS

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THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.17596 OF 1997

O R D E R:

This writ petition is filed questioning the award of the Labour Court-I, Hyderabad in M.P.No.6/1994, dated 17-04-1997.

The second respondent was a workman, who joined with the petitioner-organisation on 23-04-1971 and resigned in the year 1973. Claiming certain statutory benefits, he filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court-I, Hyderabad. In all, he claimed a sum of Rs.25,445/- under different heads, of which, three are relevant for the present purpose viz., Rs.12,650/- towards service compensation for 22 years of service at 15 days per year i.e. at the rate of Rs.1,150/-; Rs.1,725/- towards 45 days unavailed leave and Rs.1,150/- towards one month minimum bonus for the year 1993-94. It must be mentioned that at the stage of hearing, the learned counsel for the petitioner had not disputed the other two items viz. difference in minimum wages of Rs.5,120/- and variable D.A. of Rs.4,800/-.

Heard Sri B.G.Ravindra Reddy, learned counsel for the petitioner and Sri V.Viswanatham, learned counsel representing

the second respondent-workman.

Sri B.G.Ravindra Reddy, learned counsel for the petitioner, submitted that the Labour Court committed an error in awarding service compensation for 22 years of service. According to him, the second respondent, who joined with the petitioner-organisation on 23-04-1971, left the organization after working for 2½ years and again rejoined on 01-01-1986. He, therefore, submits that the Labour Court failed to consider this aspect and awarded the service compensation for 22 years of service. He also submitted that the provision envisaging payment of service compensation was held to be *ultra vires* by a Full-Bench of this Court in **Srinivasa Resorts Limited, Hyderabad v. State of A.P**. in W.P.No.18692 of 2001 and, therefore, the second respondent is not entitled to any amount under this head. Learned counsel also submitted that the Labour Court erroneously awarded the amount under the head "unavailed leave" in the face of the admission of the second respondent in his evidence that the Management used to pay him cash in lieu of not availing leave. Learned counsel further submitted that as regards the bonus under Section 20 of the Payment of Bonus Act, an establishment is liable to pay bonus only in cases whereat 20 or more workmen are employed and since at the relevant point of time i.e. when the second respondent had resigned, only 5 workmen were working and in the absence of any evidence adduced by the second respondent showing that there were 20 or more workmen employed by the petitioner-organisation, the Labour Court ought not to have allowed the claim of the second respondent under this head.

Per contra, Sri V.Viswanatham, learned counsel for the

second respondent, fairly admitted that the Full Bench in the judgment referred to supra declared the provisions of Section 47 *ultra vires* of the A.P.Shops and Establishments Act. Regarding the other two heads viz. unavailed leave and bonus, learned counsel submitted that the burden lies upon the petitioner-organisation to show that they had paid cash in lieu of unavailed leave and also that the establishment did not employ 20 or more workmen at the relevant point of time.

As regards the contention relating to payment of service compensation, I have perused the order of the Full Bench placed by the learned counsel for the petitioner and I am satisfied that it was held therein that sub-sections (3) & (4) of Section 47 are *ultra vires*. Hence the award of the Labour Court-I, granting service compensation is not sustainable.

With respect to the unavailed leave, learned counsel for the petitioner has drawn my attention to the cross-examination of the second respondent, who deposed as WW.1. It is apt to extract the relevant portion of his evidence, which reads thus:

> "It is true that I was Paid at that time Rs.1,500/-. It is not correct to say that it is in view of adjustment, but it was paid as my salary and over time allowance. Ex.M.6 is my signature, but it is not correct to say that it is submitted in token of full settlement. It is true that I was availing one day off for every 20 days. It is true that in lieu of leave I was getting amount in cash."

From a perusal of the evidence of the second respondent, it is very clear that he was being paid cash in lieu of his not availing leave. I am unable to accept the contention of the learned counsel for the second respondent that the burden lies upon the petitioner-

organisation to prove that it has paid the entire money due to the second respondent under this head in view of the afore-extracted unequivocal admission of the second respondent.

The reason that the facts admitted need not be proved. In the face of the categorical admission of the second respondent that he was being paid cash, the onus did not shift to the petitioner-organisation as the second respondent failed to discharge the initial burden placed upon him. The Labour Court failed to consider this aspect and there was not much discussion on the same. Therefore, the Labour Court was not justified in allowing the claim of Rs.1,725/- under the head “unavailed leave”.

With respect to the claim for bonus, under Section 1(3)(b) of the Payment of Bonus Act, 1965, it applies to every establishment in which 20 or more persons are employed on any date during the accounting year. In the evidence given by MW.1 on behalf of the Management, it was stated that there were only 5 workers working at the relevant time. In the cross-examination of this witness, the said statement was not referred to the witness to impeach this statement given in the chief-examination. Moreover, the second respondent, who was examined as WW.1 categorically deposed that at the time of his resignation, 7 workers were working. Since the initial burden is on the second respondent to show that the petitioner-organisation falls within the definition of any other establishment under Section 1(3)(b) of the Payment of Bonus Act, and having failed to discharge the same, the award of the Labour Court on this head is liable to be set aside.

For the aforementioned reasons, the award of the Labour

Court allowing the claim of the second respondent towards service compensation, unavailed leave and one month minimum bonus for the year 1993-94 is set aside. It would necessarily mean that the rest of the award of the Labour Court is not interfered with.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V. NAGARJUNA REDDY,J

Dt:02-03-2007
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